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Datasheet for the decision of 13 February 2024

Case Number: T 1203/21 - 3.2.08

Application Number: 11182316.7

Publication Number: 2573391

IPC: F16H57/04, F16H57/08, F03D80/00

Language of the proceedings: EN

Title of invention:
Method and arrangement for controlling the lubrication of a gear system

Patent Proprietor:
Moventas Gears Oy

Opponent:
Vestas Wind Systems A/S

Relevant legal provisions:
EPC Art. 123(2)
RPBA 2020 Art. 13(2)

Keyword:
Grounds for opposition - added subject-matter (yes)
Amendment after summons - taken into account (no)

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Case Number: T 1203/21 - 3.2.08

D E C I S I O N
of Technical Board of Appeal 3.2.08
of 13 February 2024

Appellant: (Opponent)	Vestas Wind Systems A/S Hedeager 42 8200 Aarhus N (DK)
Representative:	Grünecker Patent- und Rechtsanwälte PartG mbB Leopoldstraße 4 80802 München (DE)
Respondent: (Patent Proprietor)	Moventas Gears Oy P.O. Box 158 / Eteläportintie 91 40701 Jyväskylä (FI)
Representative:	Michalski Hüttermann & Partner Patentanwälte mbB Kaistraße 16A 40221 Düsseldorf (DE)
Decision under appeal:	**Interlocutory decision of the Opposition Division of the European Patent Office posted on 19 May 2021 concerning maintenance of the European Patent No. 2573391 in amended form.**

Composition of the Board:

Chairwoman	P. Acton
Members:	M. Foulger
	C. Schmidt

Summary of Facts and Submissions

I. With the decision posted on 19 May 2021, the opposition division decided that the patent and the invention to which it related, in accordance with the main request filed on 5 November 2019, met the requirements of the EPC.

II. The opponent filed an appeal against this decision.

III. Oral proceedings took place before the Board on 13 February 2024.

IV. The appellant (opponent) requested that the patent be revoked in its entirety.

V. The respondent (patent proprietor) requested that the patent be maintained in the form found allowable by the opposition division based on the claims filed on 5 November 2019 (main request), or in the alternative, that the patent be maintained in modified form according to one of the first to fourth auxiliary requests filed with the reply to the appeal on 14 December 2021, or according to the fifth auxiliary request filed on 12 January 2024.

VI. Claim 1 of the patent (main request) reads as follows:

(feature numbering added in bold)

"**(1.0)** A gear lubrication arrangement for providing lubrication to a gear (101), comprising:
(1.1) - a lubrication pump (106) for circulating lubrication fluid (107),

(1.2) - a power source (109) coupled to the lubrication pump (106) for driving the lubrication pump (106), and

(1.3) - a controller coupled to at least one of the lubrication pump (106) and the power source (109), for controlling an output power of the lubrication pump (106),
wherein:
(1.4) - the gear lubrication arrangement is configured to provide lubrication to a gear (101) of a wind turbine,
(1.5) - the gear lubrication arrangement comprises a pressure sensor (112) disposed downstream of the lubrication pump (106) in respect of lubrication fluid pumped by the lubrication pump (106),
(1.6) - the pressure sensor (112) is configured to measure a pressure of the lubrication fluid and to produce a pressure indication signal representative thereof, and
(1.7) - the gear lubrication arrangement comprises a temperature sensor (113) configured to measure temperature of the lubrication fluid and to produce a temperature indication signal representative thereof, and
(1.8) - the controller is arranged to vary the output power of the lubrication pump (106) at least partly on the basis of the pressure indication signal and at least partly on the basis of the temperature indication signal
(1.9) so that the output power of the lubrication pump is limited in response to a situation in which the temperature indication signal indicates temperature below a predetermined limit,
characterized in that
(1.10) - the gear lubrication arrangement comprises a signalling output (114) for transmitting information to

a remote monitoring location, and
(1.11) - the controller is configured to send to said signalling output (114) information indicative of which output power it has selected for the lubrication pump (106)."

The auxiliary requests have the following modifications in claim 1 of the main request, additions underlined, deletions struck-through:

Auxiliary request 1 has the following modification in feature 1.8:

(1.8') - the controller is arranged to vary the output power of the lubrication pump (106) ~~at least~~ partly on the basis of the pressure indication signal and ~~at least~~ partly on the basis of the temperature indication signal

In claim 1 of auxiliary request 2 the following feature has been added at the end of feature 1.8' in claim 1 of auxiliary request 1:

(1.13) "corresponding to a situation in which the lubrication fluid is cold"

In claim 1 of auxiliary request 3 the following underlined features were added in feature 1.11 of claim 1 of the main request:

(1.11') "the controller is configured to send to said signalling output (114) information indicative of i) the pressure of the lubrication fluid ii) the temperature of the lubrication fluid, and iii) which output power it has selected for the lubrication pump (106)."

In claim 1 of auxiliary request 4 the following feature was added at the end of feature 1.11 of the main request:

(1.14) "and the output power of the lubrication pump is varied on the basis of the pressure indication signal only if the temperature indication signal indicates that the temperature of the lubrication fluid is within predetermined limits."

In claim 1 of auxiliary request 5 feature 1.9 is amended as follows:

(1.9') "so that the output power of the lubrication pump is limited in very cold conditions ~~response to a situation~~ in which the temperature indication signal indicates temperature below a predetermined limit"

VII. The appellant argued essentially that the subject-matter of claim 1 of all the requests extended beyond that of the application as filed. Auxiliary request 5 was late filed and clearly not allowable, as such it should not be admitted into the proceedings.

VIII. The respondent argued essentially that the subject-matter of claim 1 did not extend beyond that of the application as originally filed. Auxiliary request 5 was filed in response to the Board's communication and should thus be admitted.

Reasons for the Decision

1. Added subject-matter (Article 123(2) EPC)

Claim 1 of the patent is based on a combination of claims 1 and 7 as originally filed with the addition of feature 1.9 whereby:

"so that the output power of the lubrication pump is limited in response to a situation in which the temperature indication signal indicates temperature below a predetermined limit."

The respondent cites p. 4, l. 6 - 16 as a basis for the amendment (paragraph [0016] of the published application). This passage states that it may be advantageous to use pressure in combination with other factors, e.g. temperature, to control the output power.

However, this passage does not mention a predetermined temperature limit and thus does not disclose the added feature.

The respondent also argues that a basis could be found in p. 2, l. 13 - 19 and p. 9, l. 20 - p. 10, l. 2 (paragraphs [0007] and [0037],[0038] of the published application). They argue that the skilled person would consider that pressure was not a reliable indicator because it depends on the viscosity of the fluid and the location of the measurement. The skilled person would therefore immediately realise that power was meant rather than pressure and directly and unambiguously derive feature 1.9 from the cited passages.

The application, p. 2, l. 13 - 19, merely states that

the viscosity of the lubrication fluid changes with temperature. The changes in viscosity affect how the fluid flows through the lubrication channels. This passage does not give any information regarding the control of the gear lubrication arrangement.
The citation, p. 9, l. 32- p. 10, l. 2 (paragraph [0038] of the published application) describes a method for selecting a target pressure whereby if the temperature is below a predetermined threshold, a second, lower target pressure is selected.

This is however a different teaching from that of the claim because the claim requires that the power of the pump is limited and not the pressure. Moreover, even if power could be regarded as being equivalent to pressure, the application as filed teaches using two target pressures for the control which is a more specific teaching than the claim which merely requires that the power is limited.

It is correct, as argued by the respondent, that there is a relation between pressure and power. However, there is not a one to one correlation between the two. Indeed according to the application p. 9, l. 20 - 31, power and pressure are not the same.

From the above the Board considers that the subject-matter of feature 1.9 of claim 1 extends beyond that of the application as originally filed contrary to Article 123(2) EPC.

2. Auxiliary requests 1 to 4

Claim 1 of auxiliary requests 1, 3 and 4 all contain Feature 1.9. The additional amendments carried out in these requests undisputedly do not have any influence

on the subject-matter of feature 1.9. Therefore, the same added subject-matter problem as in claim 1 of the main request still applies to these requests whose subject-matter also infringes Article 123(2) EPC.

The respondent argued that at least in auxiliary request 2 the objection raised against the main request of an intermediate generalisation had been overcome. This may be correct but the extension of the subject-matter beyond that of the application as originally filed due to feature 1.9 discussed above remains.

Hence, the auxiliary requests 1 - 4 are also not allowable.

3. Auxiliary request 5 - Admittance

Auxiliary request 5 was filed on 12 January 2024, i.e. after notification of a communication under Article 15 (1) RPBA. Its admittance is thus subject to Article 13(2) RPBA.

The respondent argued that this request was filed in response to the Board's communication dated 15 December 2023. They had been surprised that the Board had not followed the opinion of the opposition division.

The Board did not find this reasoning persuasive because the appellant's objection regarding added subject matter had always been in the proceedings. The passage of the Board's communication cited merely summarised the arguments of the appellant and did not introduce any new aspect which would have justified an amendment to the respondent's case. The fact that the Board did not follow the opposition division's opinion

is not a reason to file new requests, let alone does it represent an exceptional circumstance. This eventuality should rather have been considered when filing the reply to the appeal.

The request was therefore not admitted into the proceedings.

Order

For these reasons it is decided that:

1. The decision under appeal is set aside.

2. The patent is revoked.

The Registrar: The Chairwoman:

C. Moser P. Acton

Decision electronically authenticated